



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

IN THE MATTER OF	)	Docket No. CWA-08-2002-37
	)	
Martin's, Inc.	)	
106 W. 1 <sup>st</sup> Street, S	)	
Brookings, S.D. 57006	)	
	)	
Respondent.	)	
_____	)	

**CONSENT AGREEMENT**

Complainant United States Environmental Protection Agency Region VIII ("Complainant") and Respondent, Martin's, Inc., ("Martin's" or "Respondent"), by their undersigned representatives, hereby consent and agree as follows:

1. On September 30, 2002, Complainant issued Respondent an Administrative Complaint and Notice of Opportunity for Hearing under Section 311(b)(6)(B)(i) of the Clean Water Act (the Act), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990 (herein, the "Complaint"), for alleged violations of the Act and related Spill Prevention, Control and Countermeasures requirements set forth at 40 C.F.R. Part 112 at Respondent's bulk fuel distribution facility located at 106 W. 1<sup>st</sup> Street, S, Brookings, South Dakota. The Complaint proposed a civil penalty for the violations alleged therein.
2. Respondent admits the jurisdictional allegations of the Complaint.
3. Respondent neither admits nor denies the specific factual allegations of the Complaint.
4. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.
5. This Consent Agreement, upon incorporation into a Final Order, applies to and is

binding upon Complainant and Respondent (hereafter referred to collectively as “the parties”), Respondent’s successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.

6. This Consent Agreement contains all terms of the settlement agreed to by the parties.
7. Respondent consents and agrees to pay the amount of Six Thousand Five Hundred Dollars (\$6,500.00) to resolve all counts alleged in the Complaint.
8. Respondent shall remit a cashier’s or certified check in the amount of Six Thousand Five Hundred Dollars (\$6,500.00) within sixty (60) days of the effective date of the Final Order made payable to "Oil Spill Liability Trust Fund" to:

Jane Nakad  
Technical Enforcement Program (8ENF-T)  
U.S. EPA Region VIII  
999 18th Street, Suite 300  
Denver, CO 80202-2466

Respondent shall write the docket number and name of the facility on the check.

9. Respondent agrees to mail a copy of the check simultaneously to the following:

Amy Swanson (8ENF-L)  
U.S. EPA Region VIII  
999 18th Street, Suite 300  
Denver, CO 80202-2466

and to:

Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA Region VIII  
999 18<sup>th</sup> Street, Suite 300

10. Respondent agrees that in the event that payment is not received by the date specified in paragraph 8 above, interest shall accrue from the due date at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and will continue to accrue until payment is received in full.

11. In addition, Respondent agrees to pay a handling charge of fifteen dollars (\$15.00) after the first 30 days that the payment, or any portion thereof, is overdue, and each subsequent thirty-day period that the penalty remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount not paid within 90 days after the date of the Final Order. Payments are first applied to accrued interest, penalty and/or handling charges; the balance is then applied to the outstanding principal amount.

12. Respondent agrees that the penalty paid under this Consent Agreement may not be claimed as a federal or other tax deduction or credit.

13. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Act and its implementing regulations.

14. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

15. Nothing in this Consent Agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted if Respondent fails to perform pursuant to the terms of this Consent Agreement.

16. Respondent's undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he or she represents to the terms and conditions of this Consent Agreement.

17. The parties agree to bear their own costs and attorneys fees in connection with this matter.

18. The parties agree to forward this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order.

19. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and upon full payment of the agreed-upon amount by the Respondent, shall constitute a complete and full civil settlement of the specific violations alleged in the Complaint.

SO CONSENTED AND AGREED TO BY:

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION VIII  
Complainant.

Date: 01/13/03 Elisabeth Evans for/  
Connally E. Mears, Director

Technical Enforcement Program

Office of Enforcement, Compliance

and Environmental Justice

Date: 01/13/03 David J. Janik for/  
Michael T. Risner, Director

David J. Janik, Supervisory Attorney

Legal Enforcement Program

Office of Enforcement, Compliance

and Environmental Justice

MARTIN'S, INC.

Respondent.

Date: 01/06/03 Allan Perry  
Martin's Representative

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **MARTINS, INC., DOCKET NO.:CWA-08-2002-37** was filed with the Regional Hearing Clerk on January 14, 2003

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region VIII, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Allen Perry

Martin's Inc.

106 W. 1<sup>st</sup> Street, South

Brookings, SD 57006

and

U. S. Coast Guard

Finance Center (OGR)

1430 A Kristina Way

Chesapeake, VA 23326

Signed \_\_\_\_\_

January 14, 2003

Tina Artemis

Regional Hearing Clerk

